



July 17, 2002

Ms. Carol Longoria  
Public Information Coordinator  
The University of Texas System  
201 West 7th Street  
Austin, Texas 78701-2981

OR2002-3917

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165910.

The University of Texas System (the "system") received a request for the following information:

Two campus police officers . . . came to the school to question [the requestor]. The session was recorded and the two officers stated that a report would be filed. . . . [T]his . . . is a request for a copy of that report.

You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code and the Family Educational Rights and Privacy Act of 1974 ("FERPA"). We have considered the exceptions you claim and reviewed the submitted information.

You claim that section 552.108 of the Government Code excepts the submitted information from public disclosure. Section 552.108, the "law enforcement exception," provides in relevant part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication [.]

Gov't Code § 552.108(b)(2). Section 552.108(b)(2) protects information relating to a concluded investigation that did not result in a conviction or a deferred adjudication.

Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You represent to this office that the information in Tabs 4 and 5 relates to an investigation of "a complaint concerning th[e] requestor" that did not result in a conviction or deferred adjudication. Based on your representations and our review of the information at issue, we thus find that the system may withhold from public disclosure the information at issue, pursuant to section 552.108(b)(2).

We note, however, that information normally found on the front page of an offense report is generally considered public. See generally Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Basic information that must be released includes, but is not limited to, an arrestee's name, offense committed, property involved, vehicle involved, detailed description of the offense, booking information, the charge, and bonding information. Open Records Decision No. 127 at 4-5 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the incident report.<sup>1</sup> Although section 552.108(b)(2) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

You indicate that the addresses and home phone numbers of the interviewed persons may be excepted from disclosure under FERPA, 20 U.S.C. § 1232g, and thus must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>2</sup> In this regard, section 552.026 of the Government Code provides as follows:

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<sup>1</sup>As section 552.108 is dispositive regarding the submitted driver's license numbers, we do not address your section 552.130 claim.

<sup>2</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA].

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student. *See* 20 U.S.C. § 1232g(d). "Education records" are those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).

However, the system police department records you submitted to this office as responsive to the request do not constitute "education records" for purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); Open Records Decision No. 612 (1992) (term "education records" does not include records maintained by law-enforcement unit of educational agency or institution created by that law-enforcement unit for purpose of law enforcement). Consequently, none of the submitted records are made confidential under FERPA.

This office has held that information may be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* In this case we find that you have not demonstrated an imminent physical danger that would constitute such "special circumstances." Therefore, the addresses and home phone numbers of the interviewed persons may not be withheld under section 552.101 in conjunction with common-law privacy.

In summary, with the exception of basic information, which must be released, the system may withhold the submitted information under section 552.108(b)(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325.

Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 165910

Enc. Submitted documents

c: Mr. Billy W. Vaughan  
14647 Lasater Road #66  
Dallas, Texas 75253  
(w/o enclosures)